

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SUSAN SOTO PALMER et al.,

Plaintiffs,

v.

STEVEN HOBBS, in his official capacity
as Secretary of State of Washington, et al.,

Defendants,

and

JOSE TREVINO et al.,

Intervenor-Defendants.

Case No.: 3:22-cv-5035-RSL

BENANCIO GARCIA III,

Plaintiff,

v.

STEVEN HOBBS, in his official capacity
as Secretary of State of Washington, et al.,

Defendants.

Case No.: 3:22-cv-5152-RSL-DGE-LJCV

THE STATE OF WASHINGTON'S, *SOTO PALMER* INTERVENOR-DEFENDANTS',
AND *GARCIA* PLAINTIFF'S JOINT
RESPONSE TO *SOTO PALMER*
PLAINTIFFS' MOTION FOR
CLARIFICATION REGARDING TRIAL
SCHEDULE

The State of Washington, *Soto Palmer* Intervenor-Defendants, and *Garcia* Plaintiff (the
"Responding Parties"), at the request of the Court (*see Soto Palmer* ECF No. 177) file this Joint
Response to *Soto Palmer* Plaintiffs' Motion for Clarification Regarding Trial Schedule ("Motion

for Clarification”), (*Soto Palmer*, ECF No. 174; *Garcia*, ECF No. 57). Because, with reasonable procedural agreements, all Parties in both *Soto Palmer* and *Garcia* can present the Court with necessary evidence in the long scheduled five-day trial setting, and because, contrary to the *Soto Palmer* Plaintiffs’ prior claims, the key witnesses will be available the week of June 5, there is no need to rearrange the trial schedule on the eve of trial. (*See Soto Palmer*, ECF No. 137 (second amended order setting trial date); *Garcia*, ECF No. 27 (order setting amended trial date).) Maintaining the present trial setting will not only preserve limited judicial resources, but, between the various out-of-town attorneys, witnesses, and experts, it would also significantly lower the financial burden of the Parties.

I. Meet and Confer

At the encouragement of the Court, all Parties participated in a meet and confer via Zoom on May 4, 2023. (*See* ECF No. 177 (“[T]he parties in both cases are strongly encouraged to meet and confer in an attempt to develop a joint proposal that keep the current trial schedule and meets the needs of all concerned.”)). The Parties, met for about an hour and were joined for part of the meeting by counsel for the Redistricting Commissioners and counsel for most legislative staff. Prior to the meet-and-confer, there appears to have been some misunderstandings and confusion, which led *Soto Palmer* Plaintiffs to notify the Court that several necessary witnesses would be unavailable during the week of June 5, 2023. But during the conference, counsel for the Redistricting Commissioners (Aaron Millstein) and legislative staff (Jessica Goldman) informed all Parties that, while some witnesses might only be available on certain days, all relevant and necessary legislative staff and Redistricting Commissioners would be available to testify live in Court during the week of June 5, 2023. Despite this, *Soto Palmer* Plaintiffs did not offer any proposals that would allow for all claims from *Soto Palmer* and *Garcia* to be heard while maintaining the current trial schedule—nor were they willing to participate in procedural negotiations to keep to the current schedule put forward by other parties.

Although *Soto Palmer* Plaintiffs would not agree to any proposals that maintained the current trial setting for all claims, all Parties were able to reach a tentative agreement on several

1 time-saving procedures—such as waiving opening statements, the admission of expert reports as
2 substantive evidence, a joint evidence list that would be pre-admitted, and the admissibility of
3 several deposition designations. Because the Responding Parties are of the opinion that—given
4 the large amount of over-lapping evidence and witnesses—both the *Soto Palmer* and *Garcia* can
5 be heard within the presently scheduled week of June 5, 2023, trial setting, they agreed to jointly
6 file their trial proposal with the Court. Plaintiffs were invited to participate in this joint filing but
7 declined.

8 **II. June 5, 2023, Trial Proposal**

9 At the onset, it is important to note that many of the necessary facts in both *Soto Palmer*
10 and *Garcia* are uncontested. For example, all parties rely on publicly available U.S. Census data
11 and Washington State election results. Further, much of the evidence consists of public records,
12 including emails and meeting recordings and minutes. All of this evidence should be able to come
13 in without objection. Although some contested factual matters exist, a week-long trial should
14 sufficient to allow all Parties to present that evidence given the availability of the Commissioners
15 and legislative witnesses during the week of June 5. Most disagreements between the Parties are
16 legal, not factual.

17 What follows is a proposed framework that the Responding Parties believe would allow
18 for an efficient, yet fair, presentation of evidence at the presently scheduled June 5, 2023, trial
19 setting. If the Court agrees with this trial framework, additional deadlines and details must be
20 finalized:

- 21 • All parties file Trial Statements (as presently directed in the current trial schedule) and
22 will waive opening statements;
- 23 • Expert reports (with the exception of those that were withdrawn by the submitting
24 party) will be entered as evidence and will serve as the direct examination for that
25 expert. All experts whose reports that are admitted as evidence must be made available
26 for in-person cross examination and redirect;

- The four voting commissioners, along with the primary staffer for each, will testify in-person at trial. No deposition testimony will be designated for these eight individuals:
 - Commissioner Brady Piñero Walkinshaw (and primary legislative staffer Ali O’Neil);
 - Commissioner April Sims (and primary legislative staffer Osta Davis);
 - Commissioner Joe Fain (and primary legislative staffer Anton Grose);
 - Commissioner Paul Graves (and primary legislative staffer Paul Campos);
 - All other witnesses may testify through deposition designation. All parties would agree on a single deposition designation for each witness to be used in both matters;
- All parties would agree to a single list of pre-admitted exhibits. Parties will be liberal as to what would be permitted as pre-admitted exhibits in light of the weighing and evaluation of evidence by the Court. There would be a single exhibit list, with shared numbering, for both matters. Any exhibits not pre-admitted should be minimal;
- Each party (*Soto Palmer* Plaintiffs, the State, and *Soto Palmer* Intervenor-Defendants/*Garcia* Plaintiff) would share equal chess-clock time of approximately 1/3 of all hours for the week allotted for trial (the current estimate is approximately 10.5 hours per the three parties for the week).
 - Any party could call any witness in-person if they wished, regardless of whether they already designated deposition testimony;
 - The approximate 10.5 hours takes a traditional work-day into account. However, if the Court is open to increasing a trial day, more time could be allotted to each side.
 - Based on representations of counsel for the Secretary, the Secretary of State would only need approximately 30 to 60 minutes of trial time during the week, of which counsel for the State has stated would provide time from the State’s allotted time;

- Due to the significant overlap in evidence and witnesses, all Parties would create a single pre-trial statement that would be submitted to the Court, as opposed to having separate documents for *Soto Palmer* and *Garcia*;
- Parties would work to accommodate individual witnesses who can only appear on certain trial days, taking certain witnesses out of order if necessary;
- *Soto Palmer* Plaintiffs would start evidence on Monday, and each witness would be made available for other parties to cross-examine for both matters. Unless the Court finds good cause, no witness will be called more than once;
- Each Party would get approximately one hour to present a closing argument. This would essentially serve as an oral argument of sorts to present legal arguments and answer any questions the Court might have;

III. Conclusion

Given the significant overlap in witnesses and exhibits, it would be a substantial waste of judicial and financial resources—not to mention wasted time for trial counsel and witnesses/experts that would possibly need to be recalled to a later trial setting—to bifurcate the trial at this stage. The vast majority of evidence in both *Soto Palmer* and *Garcia* is not contested and should be able to come to the Court per prior agreement of the Parties. Additionally, given the intent inquiry that is part of claims for both parties (admittedly, with different applicable legal standards), a week of in-person testimony, alongside pre-admitted record evidence, is more than sufficient for the Court to arrive at an informed position regarding the intent of the Commissioners. The trial for both *Soto Palmer* and *Garcia* should go forward as presently scheduled—during the week of June 5, 2023. The responding parties see no need to add any trial time beyond that single week. All parties have been on notice of the present trial setting for months and have had ample time to present any objections to the Court.

1 DATED this 9th day of May, 2023.

2 Respectfully submitted,

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DATED this 9th day of May, 2023.

s/ Andrew R. Stokesbary
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1 **CERTIFICATE OF WORD COUNT**

2 I certify that this joint response contains 1,341 words, in compliance with the Local Civil
3 Rules of the United States District Court for the Western District of Washington.

4 DATED this 9th day of May, 2023.

5 Respectfully submitted,

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